

E-filed on November 5, 2009

6 Attorneys for Secured Creditor,
BAC HOME LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS SERVICING, LP

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
0 FRUMENCIO GALENO and JOAQUINA
1 MONTIEL

Case No.: BK-S-09-25446-MKN
Chapter 13

**OPPOSITION TO MOTION TO
VALUE DEBTORS' NON-PRINCIPAL
RESIDENCE REAL PROPERTY AND
TO MODIFY THE RIGHTS OF
PARTIALLY SECURED
LIENHOLDERS AND OBJECTION
TO LIENHOLDERS' PROOF(S) OF
CLAIM**

Date: November 19, 2009
Time: 2:30 P.M.

17 BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS
18 SERVICING, LP (hereinafter “BAC”), a Secured Creditor in the above-entitled Bankruptcy
19 proceeding, hereby submits its Opposition to the Motion to Value Debtors’ Non-Principal
20 Residence Real Property and To Modify the Rights of Partially Secured Lienholders and
21 objection to Lienholders’ Proof(s) of Claim.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

On August 21, 2009, the Debtors filed their petition under Chapter 13 of the Bankruptcy Code. The Debtors own the home located at 2370 Fujita Way, Las Vegas, NV 89115 (the “Property”).

6 The Property is security by a First Deed of Trust in favor of BAC in the amount of
7 \$216,000.00, loan number ending in 4708 (the “First DOT”). Attached to the Motion to Value
8 Debtors’ Non-Principal Residence Real Property and to Modify the Rights of Partially Secured
9 Lienholders and Objection to Lienholders’ Proof(s) of Claim (the “Motion”) is an appraisal
10 indicating that the value of the Property purports to be the amount of \$60,000.00. The Motion is
11 seeking an order from this Court determining that the First Deed of Trust is partially unsecured
12 debt, and that for any amount in excess of \$60,000.00, the First DOT is unsecured debt.

II. ANALYSIS

A. A MODIFIED SECURED DEBT CANNOT BE PAID OVER A PERIOD OF TIME LONGER THAN THE CHAPTER 13 PLAN TERM.

16 A Chapter 13 debtor may not invoke both a modification of a secured creditor's claim,
17 and the right to cure and maintain the secured claim over the life of the original loan,
18 simultaneously. In In re Ikechukwu MacDonald Enewally, 368 F.3d 1165, Bankr. L. Rep. P
19 80,106, debtors filed adversary claim against mortgage creditor, seeking judgment valuing non-
20 residential mortgaged property at an amount less than the outstanding loan amount, bifurcating
21 the real estate lien into secured and unsecured claims, extending term of repayment beyond life
22 of plan, and disposing of the unsecured lien through the confirmed Chapter 13 plan. The court
23 held that if a Chapter 13 debtor proposes to reduce the monthly payments to a secured creditor,
24 the loan must be paid in full over the life of the plan, which may not exceed five years.

1 Moreover, Chapter 13 debtors could not both bifurcate mortgage lien on non-residential real
2 estate into separate secured and unsecured claims, disposing of the unsecured claim through the
3 plan, and repay the secured claim over a period of longer than the plan term; under the
4 Bankruptcy Code, when a secured debt was modified, it was required to be paid within the plan
5 term, not to exceed five years.

6 **B. THE CREDITORS ARE ENTITLED TO A HEARING ON THE VALUATION OF
7 THE PROPERTY OFFERED BY THE DEBTOR.**

8 FRBP Rule 3012 states as follows:

9 "The court may determine the value of a claim secured by a lien on property in
10 which the estate has an interest on motion of any party in interest and after a
hearing on notice to the holder of the secured claim and any other entity as the
court may direct."

11 Proper valuation of property securing creditor's claim, for purpose of deciding whether
12 creditor had a fully secured, undersecured or unsecured claim, was replacement value approach,
13 based on what Chapter **13** debtors would have to pay for comparable property. In re Plourde,
14 402 B.R. 488 Bankr.D.N.H., 2009.

15 BAC contends that the fair market value of the subject Property may be higher than the
16 amount stated in Debtors' Motion. In the event this Court grants the motion to value collateral,
17 BAC requests a hearing and the opportunity to present evidence on the same.

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III. CONCLUSION

Based on the facts and arguments as set forth above, BAC respectfully requests as that this Court deny the Motion to Value Debtors' Non-Principal Residence Real Property and to Modify the Rights of Partially Secured Lienholders and Objection to Lienholders' Proof(s) of Claim or, in the alternative, confirm Debtors are to pay the determined fair market value in full over the course of the Plan; that the fair market value be determined at an evidentiary hearing; and that Debtors' Objection to BAC's Proof of Claim be denied.

MILES, BAUER, BERGSTROM & WINTERS, LLP

Dated: November 5, 2009 By: /s/ Jeremy T. Bergstrom, Esq.
Jeremy T. Bergstrom, Esq.
Attorney for Secured Creditor

(09-94652/objaznv.dot/srb)

CERTIFICATE OF MAILING

The undersigned hereby certifies that on November 5, 2009, a copy of
Secured Creditor's **Opposition to Motion to Value Debtors' Non-Principal Residence Real
Property and to Modify the Rights of Partially Secured Lienholders and Objection to
Lienholders' Proof(s) of Claim** was served by depositing a copy of same in the United States
Mail, in a postage prepaid envelope, addressed to:

DEBTORS:

8 Frumencio Galeno
Joaquina Montiel
4650 East Carey Avenue
9 Las Vegas, NV 89115

ATTORNEY FOR DEBTOR:

11 Jorge L. Sanchez
Sanchez Law Group
900 S. Fourth St. #100
12 Las Vegas, NV 89101

CHAPTER 13 TRUSTEE:

14 Kathleen A. Leavitt
201 Las Vegas Blvd. South, Suite 200
Las Vegas, NV 89101

6 I declare under penalty of perjury under the laws of the State of Nevada that the
7 foregoing is true and correct.

/s/ Sarah R. Biondo
An Employee of Miles, Bauer, Bergstrom & Winters, LLP
(09-94652/obiazny.dot/srb)